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November 16, 2000

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Honorable Nicholas G. Garaufis
United States District Court
Eastern District of New York
Brooklyn Courthouse
225 Cadman Plaza East
Brooklyn, New York

Re: Departments of Amazonas, et al. v. Philip Morris, etc.
Case number: 00 Civ 02881 (NGG)

Dear Judge Garaufis:

At the hearing of October 13, 2000, wherein this Court denied the Defendant's motions to stay proceedings, the Court also ordered that the Plaintiffs would be allowed to conduct discovery as to non-parties upon application to the Court. The Plaintiffs have contacted the Defendants and requested that they agree to the propounding of subpoenas. The Defendants have declined to agree. (See letter of Irvin Nathan attached hereto as Exhibit 19.) Accordingly, pursuant to Local Rule 37.3, the Plaintiffs request that this Court enter an order allowing the Plaintiffs to propound the attached subpoenas duces tecum.

The Plaintiffs attach hereto 13 subpoenas duces tecum that the Plaintiffs respectfully request they be given leave to serve as the first step in discovery in this case. All of the subpoenas duces tecum are directed to United States banks and request bank records related to specific accounts. The Plaintiffs have substantial evidence to demonstrate that the aforesaid bank accounts contain evidence of money laundering in conjunction with the purchase of Philip Morris cigarettes that were ultimately smuggled into the Republic of Colombia.

For purposes of this letter, the subpoenas are labeled numbers 1-13. Subpoenas 1 through 9 are directed to banks such as Chase Manhattan Bank, Citibank, and Banco Central of New York, located in the Eastern District of New York. The account numbers specified in the subpoenas belong to individuals, some of whom have previously been identified by U.S. law enforcement and/or indicted and/or convicted of money laundering. The documentation attached as exhibits to the subpoenas demonstrates that in each instance the bank account holder issued multiple checks that were used as payment to a company known as Mansur Trading Freezone N.V. in Aruba for the payment for Philip Morris

cigarettes on behalf of persons other than the holder of the account. In each such instance, the true purchaser of the cigarettes transported the cigarettes illegally into Colombia. In each such incident, payment for the cigarettes was ultimately delivered from Mansur Trading Freezone N.V. to PHILIP MORRIS PRODUCTS, INC. in New York, New York. Mansur Trading Freezone N.V. was, at relevant times, Philip Morris' primary distributor of cigarettes into Colombia.

The bank account identified in subpoena number 10 is identical in character to the bank accounts subpoenaed in subpoenas numbers 1 through 9 with the exception that the bank in question is located in Miami, Florida.

Subpoena number 11 is for bank account records currently in the possession of the Trustee in Bankruptcy of Southeast Bank N.A., previously located in Miami, Florida. Documents attached hereto demonstrate that this particular bank account represented the conduit by which Mansur Trading Freezone N.V. at relevant times made payments for cigarette products to PHILIP MORRIS PRODUCTS, INC. As such, this bank account is highly relevant to the Plaintiffs' case in that it represents a substantial link in the money laundering chain.

Subpoenas numbered 12 and 13 are for bank account records from Barclay's Bank in Miami, Florida, and CitiBank in Buffalo, New York. Each of these bank account records relate to bank accounts held by InterBank Aruba N.V. and that represent a conduit by which Mansur Trading Freezone N.V. at relevant times made payments for cigarette products to PHILIP MORRIS PRODUCTS, INC. As such, these bank accounts are highly relevant to the Plaintiffs' case in that they represent a substantial link in the money-laundering chain.

If requested to do so by the Court, the Plaintiffs can give a detailed explanation and analysis as to how the records in question prove the money laundering alleged. However, for the purpose of brevity in this letter, the Plaintiffs will simply inform the Court that the packages of documents attached to the subpoenas duces tecum demonstrate the following:

- a. In approximately December 1989, PHILIP MORRIS PRODUCTS, INC. shipped a large volume of cigarettes (e.g. 53,900,000 Marlboro cigarettes) from its production facilities in the United States to Mansur Trading Freezone N.V. in Aruba by way of Miami, Florida.
- b. Subsequent to that date, Mansur Trading Freezone N.V. sold Marlboro cigarettes to a variety of its customers, keeping records as to the name of the customer and the dollar value of cigarettes purchased. In no instance is the customer who purchased the cigarettes the person who issued payments for the cigarettes.
- c. In each instance, the cigarettes were paid for by individuals located in the Eastern District of New York or in Miami, Florida, by way of checks drawn from the bank accounts that are the subject matter of this motion. In each instance, payment was made by way of a series of personal checks, often consecutively numbered, and always dated within a few days of each other. (See summary of documents attached hereto as Exhibit 14.) In most instances, the checks are for amounts less than Ten Thousand Dollars (\$10,000.00) each so as to avoid the Ten Thousand Dollar limit that would trigger reporting duties by the banks and/or detection by

United States bank regulators if the checks had been cashed and not used for purchases. For example, in the period between April 1, 1990, and April 5, 1990, Bladen A. Rizo wrote 18 checks from five different banks that were ultimately delivered to Mansur Trading Freezone N.V. Each check was for an amount between Four Thousand One Hundred Dollars (\$4,100.00) and Four Thousand Seven Hundred Dollars (\$4,700.00) and was used for the purchase of cigarettes. (Subpoenas numbered 1-5.)

- d. Usually, when Mansur Trading Freezone N.V. received these checks, they would stamp their name on the check as payee and write on the check the name of the actual cigarette customer for whom each payment was made. The checks, along with others, were all deposited into a bank account of Mansur Trading Freezone N.V. at Interbank Aruba N.V.
- e. Interbank Aruba N.V. had opened a bank account at Southeast Bank N.A. located in Miami, Florida. After Southeast Bank N.A. went bankrupt, Interbank Aruba N.V. established similar accounts at Barclay's Bank in Miami and Citibank in Buffalo, New York.
- f. Payments were made from Mansur Trading Freezone N.V. to PHILIP MORRIS PRODUCTS, INC. at its address at 120 Park Avenue, New York, New York, by way of checks drawn on the Southeast Bank account held by Interbank Aruba N.V. In one example, the payment was in the amount of One Million Forty-seven Thousand Five Hundred Ninety-nine dollars and Fifty-five cents (\$1,047,599.55). At later dates, InterBank Aruba N.V. made similar payments to PHILIP MORRIS PRODUCTS, INC. through the accounts it had opened at Barclay's Bank, in Miami and CitiBank in Buffalo, New York. The payments made to PHILIP MORRIS in the attached exhibits total approximately \$73,000,000.

The aforesaid records support a clear case of classic money laundering.

Subpoena number 11 (and others) also relate to bank records that are material evidence towards proving that all or part of the proceeds of the money-laundering scheme are narcotics proceeds. The documents attached hereto as Exhibit "15" reveal that the original purchaser of some of the cigarettes in question is an individual known as Santander Lopesierra. As has been explained previously to the Court,

Santander Lopesierra is known in Colombia as "The Marlboro Man" (Exhibit "16") and was a direct customer of the PHILIP MORRIS DEFENDANTS as reflected in the accounting records and accounts receivable documentation generated by PHILIP MORRIS. Santander Lopesierra is also a documented narcotics smuggler as is demonstrated by the pages from the affidavit attached hereto as Exhibit "17". In the records of Mansur Trading Freezone N.V., the account of Santander Lopesierra is often designated as "Pollo" or "Pollo S.A."

The documentation attached hereto to subpoena 11, demonstrates that Santander Lopesierra, as a direct customer of PHILIP MORRIS, purchased Marlboro cigarettes and sometimes paid for them by way of checks made out to PHILIP MORRIS PRODUCTS, INC. However, the checks were not delivered to PHILIP MORRIS PRODUCTS, INC. Instead, the checks were delivered to Mansur Trading Freezone N.V. in Aruba. Mansur Trading Freezone would deposit checks made out to PHILIP MORRIS PRODUCTS, INC. in bank accounts of Mansur Trading Freezone N.V. at Interbank Aruba N.V. On other occasions, checks made out to Santander Lopesierra were endorsed and delivered to Mansur Trading Freezone N.V. as payment for cigarettes and the aforesaid checks were deposited into bank

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accounts of Mansur Trading Freezone N.V. at Interbank Aruba N.V. The records sought in subpoena number 11 will allow the Plaintiffs to trace the Lopesierra payments back to PHILIP MORRIS PRODUCTS, INC. Clearly, the funds were intended for PHILIP MORRIS PRODUCTS, INC. in that some of the original checks were made out to PHILIP MORRIS PRODUCTS, INC.

The documents attached to subpoena number 11 also relate to transactions involving an individual known as David Cybul, also known as David Cybulkiewicz. David Cybul has previously been identified by U.S. law enforcement as a person implicated in the laundering of narcotics proceeds. See Exhibit "18." Numerous documents in the Plaintiffs' possession reflect that David Cybul has been a long-time customer of both Mansur Trading Freezone N.V. and Romar Freezone, the primary distributor for BAT in Aruba. The documents attached to subpoena 11 demonstrate that David Cybul was paying for PHILIP MORRIS cigarettes from Mansur Trading Freezone N.V. The bank records sought pursuant to subpoena 11 will allow the Plaintiffs to trace funds from David Cybul to PHILIP MORRIS PRODUCTS, INC.

The aforesaid bank accounts are material evidence to demonstrate a pattern of money laundering that began in 1990 and progressed into the future. Said evidence is highly relevant to the Plaintiffs money-laundering case against the Defendants.

Most of the aforesaid evidence attached hereto relates to transactions that occurred in April and May 1990. The Plaintiffs possess voluminous records that demonstrate similar money laundering activities up to and including 1999 and shipping records related to smuggled cigarettes up to August 2000. The Plaintiffs intend to subpoena additional bank records in the near future. However, the Plaintiffs request that these subpoenas be issued promptly in that these records are highly relevant to the Plaintiffs' case, will help to show a continuing course of conduct from 1990 through the present, and may be lost or destroyed due to their age if they are not promptly recovered. In particular, the records of Southeast Bank N.A. are at risk of being lost or destroyed.

The proof of the PHILIP MORRIS DEFENDANTS' knowledge and complicity in the money laundering will be presented by separate proof once this Court allows discovery as to the parties. However, because the documents on their face present prima facie proof of money laundering by PHILIP MORRIS DEFENDANTS' primary distributor, Mansur Trading Freezone N.V., the records are clearly discoverable and the Plaintiffs should be entitled to subpoena them.

The Plaintiffs respectfully request that this Court enter an order allowing the Plaintiffs to serve the attached subpoenas duces tecum.

Very truly yours,



Kevin A. Malone

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